IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 15106 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DR. RAJAN SANATKUMAR JOSHI GYNECOLOGIST & OBSTETRICIAN AND ANOTHER

Versus

AMIT POLYCHROME PVT. LTD. AND ANOTHER

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Appearance :
MR JB PARDIWALA for Applicants.
NOTICE SERVED BY DS for Respondent No. 1.
MR YN RAVANI for Respondent No. 1.
MR PRADIP BHATE, APP for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 17/01/2006

ORAL JUDGMENT

Rule. Mr.Bhate, learned APP waives service of notice of rule on

behalf of respondent No.2 and Mr.Y.N.Ravani, learned advocate waives service of notice of rule on behalf of respondent No.1. With the consent of the parties, matter is taken up for final hearing today.

By filing this application, the applicants have prayed that Criminal Case No.4031 of 2004 pending in the Court of Metropolitan Magistrate Court No.13, Ahmedabad filed by respondent No.1 against the applicants may be quashed and set aside qua the present applicants, who are accused No.3 and 4 in the original complaint. Aforesaid complaint is filed under Section 138 of the Negotiable Instruments Act. The allegation in the complaint is that accused No.1 is a company registered under the provisions of the Companies Act and accused No.2 is the Chairman and Managing Director of the said company while accused No.3 and 4 are Additional Directors of the said company. It is alleged in the complaint that accused are managing day-to-day affairs of the company. It is also alleged that the accused-company had taken loan of Rs.4 Lacs from the complainant and had given cheque of the said amount on 13-5-2004. On presentation said cheque bounced back on the ground of “insufficient funds”. On the basis of aforesaid allegations, complaint is filed.

This application is filed by accused Nos.3 and 4. It is submitted by Mr.Pardiwala, learned advocate for the applicants that applicants are additional Directors of the company and applicant No.1 is a Gynecologist and he is a very busy doctor, while applicant no.2 is also a doctor in Vaastu Shastra. It is submitted by him that the applicants were appointed as additional directors on 31st March, 2003 and the applicants have resigned from the said post on 15th December, 2003, which is the date prior to the issuance of cheque in question. To substantiate his say,

Mr.Pardiwala has relied upon documentary evidence submitted before the Registrar of Companies as well as form No.32, which shows that both the applicants have resigned on the date specified herein above.

Realizing this aspect, Mr.Ravani, learned advocate for the complainant submitted that since both the applicants have resigned prior to the date of issuance of cheque, the applicants cannot be subjected to criminal trial under Section 138 of the Negotiable Instruments Act. Therefore, he submitted that he has no objection if the complaint against both the applicants is quashed.

Considering the fact that the applicants have resigned as additional Directors prior to the issuance of the cheque and they have also informed the said fact to the Registrar of Companies, in my view, complaint in question is not maintainable against the applicants, as they have nothing to do with the alleged offence. Considering the aforesaid aspect of the matter, this application is allowed. Complaint being Criminal Case No.4031 of 2004 pending in the Court of Metropolitan Magistrate Court No.13, Ahmedabad is quashed so far as present applicants are concerned. It is clarified that so far as rest of the directors are concerned, the complaint can be proceeded in accordance with law.

(P.B.MAJMUDAR, J.)

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